

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-5924-2013

Date of decision:19.5.2016

Krishna Devi and another

...Appellants

Versus

Hitesh and others

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.RN Lohan, Advocate for the appellants

Mr.Ravinder Malik, Advocate for respondents No.1 &2

Mr.Vipul Sharma, Advocate for respondent No.3

SNEH PRASHAR, J.

Krishna Devi and her husband had filed the present appeal against the award dated 6.7.2013 passed by learned Motor Accident Claims Tribunal, Rohtak (for short 'the Tribunal') vide which, the petition claiming compensation filed by them on account of death of their son namely Pankaj in a motor vehicular accident that took place on 2.5.2011, was dismissed.

Precisely, the facts pleaded by the appellants are that on 2.5.2011, Pankaj (since deceased) alongwith his friends Hitesh and Mohit was coming from Delhi to Rohtak in a car bearing registration No.HR-12Q-5959 (hereinafter referred to “the offending car”), which was being driven by Hitesh s/o Rambir (owner of the offending car). At about 11.00 P.M. when they were near Kheri Sadh bye pass on Delhi-

Rohtak road, the car went out of control of the driver. It climbed the

divider on the road and ultimately turned turtle. Pankaj got entangled underneath the car and was dragged to some distance. He was rushed to PGIMS Rohtak by his friend Mohit but he succumbed to the injuries. A Daily Diary Report (in short 'DDR') was lodged in respect of the alleged accident at Police Station Sampla.

By stating that the accident occurred due to rash and negligent driving of the offending car by its driver Hitesh, a petition claiming compensation under Section 166 of the Motor Vehicles Act, 1988 was filed by the parents of deceased Pankaj. The claim petition was contested by Hitesh, the driver, Rambir Singh, owner and National Insurance Company -insurer of the car. After analysing the evidence led by the parties and considering the submissions made on their behalf, learned Tribunal dismissed the petition vide award dated 6.7.2013.

Aggrieved against the award, the appellants-claimants filed the present appeal.

The submissions made by learned counsel for the parties have been heard and record perused.

Learned counsel for the appellants submitted that learned Tribunal legally erred in dismissing the claim petition. It is well established from the evidence led by the appellants that the accident occurred due to rash and negligent driving of the car by its driver Hitesh. The Daily Diary Report was lodged by eye witness Mohit, who was traveling with the deceased at the time of accident, against Hitesh, driver of the car. The deceased was a young man aged 26 years and was working as an Executive with M/s GE Capital Business Process

Management Services Pvt. LTD, AIFACS Building Rafi Marg, New Delhi. He was getting a salary of Rs.15834/- per month plus allowances.

Learned counsel for the respondents controverted the submissions made by learned counsel for the appellants and submitted that occurrence of accident as pleaded by the appellants could not be proved and learned Tribunal rightly rejected the claim of the appellants.

Learned Tribunal framed issue No.1 as under:-

“whether the accident in question resulting into the injuries to Pankaj son of Ram Kumar took place due to the rash and negligent driving of car Ford Figo bearing registration No.HR12Q-5959 by respondent No.1?OPP. The said issue was decided against the claimants by observing as under:-

“16. In the present case, there is material document DDR Ex.P1 dated 3.5.2011 wherein it is specifically mentioned that the accident in question took place by chance due to burst of the tyre of the car Ford Figo bearing registration no.HR-12Q-5959 and there is no negligence or fault on part of the respondent no.1. If the accident has been caused due to rash and negligent driving of respondent no.1 then why the petitioners or Mohit alleged eye witness have not lodged the FIR against the respondent no.1. Neither the FIR has been registered against the respondent no.1 nor any complaint has been filed by the petitioners or the alleged eye witness Mohit PW1 against the respondent no.1 that respondent no.1 was driving the car Ford Figo bearing registration no.HR-12Q-5959 in a rash and negligent manner on 2.5.2011 an respondent no.1 Hitesh was driving the car Ford

Figo bearing registration no.HR-12Q-5959 in a very high speed and he lost the control of the vehicle and the vehicle climbed on the divider of the National Highway and converted 3-4 times on the road and turned turtle in the road side ditches. Due to which, Pankaj sustained serious and grievous multiple injuries on his person and Hitesh also sustained injuries in the accident. He was taken to PGIMS Rohtak. So document DDR Ex.P1 itself goes to show this fact that the accident was occurred by chance as tyre of the car was burst and not rash and negligent driving of respondent no.1. When the respondent No.1 appeared in the witness box then he has deposed that the accident in question was occurred while he was coming from Delhi to his house at Rohtak in car Ford Figo bearing registration No.HR12Q-5959 and when he reached at the Bye Pass of village Kheri Sadh, suddenly tyre of the car was burst and due to that impact, the car was out of control and it was turned turtle, so, accident in question took place by chance, there is no negligence or fault on part of the respondent No.1. When he was cross-examined by learned counsel for the petitioners then he has specifically deposed that the car was new one. Rather he has stated that tyre burst itself. When he was cross-examined by learned counsel for respondent No.3 then he has deposed that tyre of the car was burst and due that impact car was turned turtle. There is no fault on his part. So, cross-examination of RW1 beside the document DDR Ex.P1, it has come on the record that there is no negligence on the part of the respondent no.1 for causing the accident in question.

17. It is settled that once the petitioners have

approached Tribunal under Section 166 of the Motor Vehicles Act, they have necessarily to take upon themselves the burden of establishment negligence of driver or owner of vehicle concerned. It was responsibility of the claimants to have established that respondent no.1 was driving the vehicle in a rash and negligent manner. In this regard, I draw my support from the observation held in case titled as **Surender Kumar Arora Versus Manoj Bisla (Dr.) and others 2012 ACC 1 (SC)** wherein Hon'ble Apex Court has held that "Liability of Insurance Company. Fatal accident. Entitlement of parents. Deceased was travelling in motor vehicle driven by respondent no.1. Tribunal concluded that driver of vehicle was not driving in rash and negligent manner. High Court dismissed appeal. Petition filed by claimants under Section 166 of Act and not under Section 163A of Act. It was entire responsibility of the claimants to have established that respondent no.1 drove vehicle in rash and negligent manner. Insurance company cannot be mulcted with responsibility of paying insurance amount to parents of deceased person. Impugned judgment upheld."

Indeed, the Daily Diary Report Ex.P1 was registered in respect of the accident wherein it was mentioned that the accident occurred due to bursting of the tyre and not on account of rash and negligent driving of respondent No.1 Hitesh. PW1 Mohit was accompanying the deceased at the time of accident. During trial of the instant petition, he appeared as witness of the claimants and stated that the accident took place due to rash and negligent driving of Hitesh but admittedly neither he nor the claimants stated so when the DDR Ex.P1

was registered by the Police. Subsequent to that also none of them has lodged a complaint with any higher authority disputing the cause of accident narrated in the DDR Ex.P1. Their version is apparently outcome of an after thought. A story accusing the driver of the car for rash and negligent driving appears to have been prepared with a sole motive to claim compensation.

Since, the claimants-appellants failed to prove that the accident took place due to rash and negligent driving on part of Hitesh (driver of the offending vehicle), learned Tribunal rightly dismissed the petition and the award warrants no intervention. Resultantly, there being no merit in the present appeal, it deserves dismissal.

However, the occurrence of accident and identity of the vehicle involved in the accident is not in issue. It has been held in ***Eshwarappa @ Maheshwarappa and another Versus C. S. Gurushanthappa and another 2010 (8) SCC 620*** as under:-

15. Seen in isolation the above provisions might appear harsh, unreasonable and arbitrary in as much as these create the liability of the vehicle(s) owner(s) even where the accident did not take place due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned but entirely due to the wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made but the above provisions must be seen along with certain provisions of Chapter XI. Section 146 forbids the use of the vehicle in a public place unless there is in force, in relation to the use of the vehicle, a policy of insurance

complying with the provisions of that chapter. Section 147 contains the provisions that are commonly referred to as 'Act only insurance'. The provisions of sections 146 and 147 are meant to create the large pool of money for making payments of no fault compensation. Thus the liability arising from section 140 would almost invariably be passed on to the insurer to be paid off from the vast fund created by virtue of sections 146 and 147 of the Act unless the owner of the vehicle causing accident is guilty of some flagrant violation of the law.

16. Seen thus, the provisions of chapter X together with sections 146 and 147 would appear to be in furtherance of the public policy that in case of death or permanent disablement of any person resulting from a motor accident a minimum amount must be paid to the injured or the heirs of the deceased, as the case may be, without any questions being asked and independently of the compensation on the principle of fault.

17. The provisions of section 140 are indeed intended to provide immediate succour to the injured or the heirs and legal representatives of the deceased. Hence, normally a claim under section 140 is made at the threshold of the proceeding and the payment of compensation under section 140 is directed to be made by an interim award of the Tribunal which may be adjusted if in the final award the claimants are held entitled to any larger amounts. But that does not mean, that in case a claim under section 140 was not made at the beginning of the proceedings due to the ignorance of the claimant or no direction to make payment of the compensation under section 140 was

issued due to the over-sight of the Tribunal, the door would be permanently closed. Such a view would be contrary to the legal provisions and would be opposed to the public policy.

In the light of the provisions of law as above, it is held that the appellants are entitled to “no fault compensation” under Section 140 of the Act of 1988. Accordingly, the Insurance Company is directed to pay an amount of Rs.50,000/- to the claimants- appellants alongwith simple interest @ 6% per annum from the date of petition till the date of payment.

19.5.2016
gsv

(SNEH PRASHAR)
JUDGE